

Statement of Substance of the Interview

In response to the Applicant's Arguments filed on July 27, 2006, The Examiner quotes MPEP 710.06 and relies on the underlined portion as outlined below to suggest that the Applicant was not entitled to the protections of MPEP 710.06:

Where the citation of a reference is incorrect or an Office action contains some other *error that affects applicant's ability to reply to the Office action< and this error is called to the attention of the Office within 1 month of the mail date of the action, the Office will restart the previously set period for reply to run from the date the error is corrected, if requested to do so by applicant. If the error is brought to the attention of the Office within the period for reply set in the Office action but more than 1 month after the date of the Office action, the Office will set a new period for reply, if requested to do so by the applicant, to substantially equal the time remaining in the reply period. For example, if the error is brought to the attention of the Office 5 weeks after mailing the action, then the Office would set a new 2-month period for reply. The new period for reply must be at least 1 month and would run from the date the error is corrected. See MPEP § 707.05(g) for the manner of correcting the record where there has been an erroneous citation.

However, the Examiner completely ignores the above portions of MPEP 710.06 that are **BOLDED** and which the Applicant relied on in discussions with Examiner Kovacs, Supervisor Will and Director Hajec. The Examiner admits that the error in citation of the Bich reference was brought to the Examiner's attention within the period for reply set in the Office Action, although the Examiner fails to note that the Applicant first attempted to contact the Examiner by telephone on Friday, June 9, 2006, leaving the Examiner a message, and Applicant again attempted to contact the Examiner on Monday, June 12, 2006, leaving the Examiner another message, and it was not until Wednesday, June 14, 2006, that the Examiner actually returned the Applicant's call. It should be noted that the Examiner mistakenly states the Applicant did not contact the Examiner until June 11, 2006, however, June 11, 2006, is a Sunday, not a Monday as the Examiner asserts. Although, in either case, June 10 would have fallen on the weekend and the period for reply would have extended to the following Monday as outlined in Section 710.05 of the MPEP, thus the Applicant would still have fallen within the protections of MPEP 710.06 since the

period of reply had not expired. However, the Examiner still flatly refused to follow the directives of the MPEP as outlined above.

Applicant advised Examiner Kovacs, Supervisor Will and Director Hajec that the March 10, 2006, Office Action rejected Claim 18 based on US Patent No. 6,060,071 to Bich et al., that the Applicant attempted to retrieve a copy of the US Patent 6,060,071, and upon doing so discovered that the patent was issued not to Bich, but was instead issued to Motitschke, et al. and did not relate to the technology at issue in this Application No. 10/691,213, but instead related to "Ectoin and ectoin derivatives as moisturizers in cosmetics." No further information was provided to the Applicant with the March 10, 2006, Office Action, such as indicating that the Bich reference was already part of the record, which would have allowed the applicant to determine the actual patent that the Examiner used as the basis of his 102(b) rejection of Claim 18.

Additionally, the Applicant pointed out to the Examiner that there was no PTO Form 892 included with the Office Action of March 10, 2006, and that since this was a second non-final rejection that the Applicant thought that the Examiner might have uncovered an additional US Patent that formed the basis for the Examiner's rejection of Claim 18 and that it was also possible that the Examiner put down the incorrect inventor name since the patent number was obviously in error.

The Examiner now asserts that the Bich reference cited in a PTO-892 form on June 1, 2004, over TWENTY ONE (21) FULL MONTHS prior to the March 10, 2006, Office Action Mailing, and that this should have somehow put the Applicant on notice that this was the reference that the Examiner was relying on. This would have required that the Applicant should have correctly guessed that the citation was off by only one digit and did not have two digits transposed or have more than one incorrect digit, the Applicant was apparently also supposed to correctly guess which digit it was and, finally, correctly guess which digit was meant to be used by the Examiner. Furthermore, the Examiner now asserts that, therefore, the Applicant had set forth groundless arguments in support of resetting the response time in the March 10, 2006 Office Action.

The Applicant disagrees. The full text of MPEP 710.06 supports the Applicant's position that the Examiner is REQUIRED to PROPERLY list the reference relied upon to reject a claim within the four corners of THE OFFICE ACTION IN WHICH THE CLAIM IS REJECTED in order to allow the Applicant to

consider the reference and craft a response. When interpreting the provisions of the MPEP the Examiner does not have the luxury of relying on language that favors the Examiner's position while completely ignoring the remainder of the language that **REQUIRES** the Examiner to act in favor of the Applicant.

Apparently, Director Hajec agreed with the Applicant that it is not reasonable for the Examiner to take the position that the Applicant needs to review the entire prosecution history to guess which reference the Examiner might be referring to or for the Applicant to perform the Applicant's own patent search to decipher which reference the Examiner is relying on in an Office Action to reject a claim. Instead, the Examiner needs to be clear as to what reference is relied upon when a claim is rejected, and if the Examiner is not clear, then the provisions of the MPEP need to be adhered to. Thus, Director Hajec directed that the period of reply for the March 10 Office Action be reset as 30 days from the mailing of the corrected Office Action as **REQUIRED** by MPEP 710.06 to properly list the reference relied upon to reject a claim.

The Applicant again would like to thank Director Hajec for his assistance in resolving this matter and in requiring the Examiner to follow the procedures outlined in the MPEP and grant the Applicant the relief the Applicant was entitled to.

In conclusion, since the Examiner indicated that Claims 19-24 are allowable, and since independent Claims 18 contains elements not disclosed or suggested in the prior art of record and since the Applicant believes the Examiner's rejection of claim 18 has been overcome the Applicant respectfully requests allowance of Claim 18. Thus, the Applicant believes the application is in condition for allowance, and such allowance is respectfully requested.

Respectfully,

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